IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 63 of 1995

with

WEALTH TAX REFERENCE No 92 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

KASHMIRABEN INDULAL

Appearance:

1. WEALTH TAX REFERENCE No. 63 and 92 of 1995
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Both these references under section 27(3) of the Wealth-tax Act, 1957 pertain to the same assessee. Wealth Tax Reference No. 92 of 1995 is for assessment year 1978-79 and Wealth Tax Reference No. 63 of 1995 is for assessment year 1979-80. The questions referred in each of the references raise the same controversy though the questions are differently worded in the two references. The question which is more specifically referred in Wealth Tax Reference No. 92 of 1995, reads as under:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee is entitled to exemption under section 5(1)(iv) of the Wealth-tax Act in respect of her share in the firm of M/s. Kalpana Cinema & Anand Talkies wherein the assessee was a partner?"

The question in Wealth-tax Reference No.63 of 1995 does not give the details of the properties involved but the basic issue remains the same.

2. We have heard Mr BB Naik learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of this Court in Commissioner of Wealth-tax vs. Maheshkumar R. Patel, 216 ITR 272. In the said decision, this Court held as under:-

A perusal of rule 2 of the Wealth-tax Rules, 1957, makes it apparent that for the purpose of determining the interest of a person in a partnership, the "net wealth" of the firm has to be assessed as distinct from the net assets of the firm. The definition of "net wealth" makes it abundantly clear that for arriving at any sum total of net wealth the aggregate value of all the assets has to be made in accordance with the provisions of the Act. It the net wealth of the firm is to be assessed in terms of rule 2 in accordance with the provisions of the Act, obviously the assets which are not to be included for the purpose of computing the net wealth under section 5 of the Act have to be excluded and the same cannot be made a part of the interest of a person in the partnership firm. Neither under

> general law nor under the provisions of the Wealth-tax Act is a firm a separate entity distinct from its partners. A firm as such is not a juristic person capable of holding property. Property owned in the firm name is in fact owned by the partners of the firm jointly. Therefore, there is no warrant for treating the property under the ownership of individual and under the joint ownership as partnership firm for the purpose of computing the net wealth under the Act, differently. In this connection, it may also be noticed that section 5 speaks of assets not to be included in the net wealth of a person as distinct from the assessee. If for the purpose of ownership of assets a firm is held to be a person distinct from its partners, it applies to computation of net wealth of the firm also. If a firm is not held to be a person, then the necessary corollary is that the partners are the joint owners of the asset and they being the owners of the asset, are entitled to exclude its value from the computation of their net wealth for the purpose of wealth-tax.

4. Following the aforesaid decision, our answer to the questions referred in each of these references is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-